

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Saltville Gas Storage Company, L.L.C.

Docket Nos. CP02-430-001  
and CP02-430-002

ORDER DIRECTING COMPLIANCE FILING,  
CONVENING TECHNICAL CONFERENCE  
AND DEFERRING ACTION ON REQUESTS FOR REHEARING

(Issued May 16, 2003)

1. Saltville Gas Company, L.L.C. (Saltville) and Dominion Greenbrier, Inc. (Dominion Greenbrier) separately request rehearing of the Commission's order issued on February 4, 2003,<sup>1</sup> granting Saltville a limited jurisdiction certificate pursuant to Section 284.224 of the Commission's regulations.<sup>2</sup> In its request for rehearing, Dominion Greenbrier contends that the Commission erred by finding that Saltville qualifies for the Hinshaw exemption set forth in Section 1(c) of the Natural Gas Act (NGA). Saltville requests rehearing of the Commission's rejection of Saltville's state-approved rates as its rates for interstate transportation under its Section 284.224 limited jurisdiction certificate.<sup>3</sup>

2. For the reasons set forth below, the Commission is directing Saltville in Docket No. CP02-430-002 to file additional information supporting its assertion of Hinshaw status. The Commission also is directing its staff to convene a technical conference to address issues relating to Saltville's jurisdictional status. Pending review of Saltville's response and

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<sup>1</sup>102 FERC ¶ 61,123 (2003). On March 2, 2003, the Commission issued a tolling order solely for the purpose of affording additional time for the consideration of Saltville's and Dominion Greenbrier's rehearing requests.

<sup>2</sup>18 C.F.R. § 284.224 (2002).

<sup>3</sup>Section 284.224(e) provides that Hinshaw pipelines' interstate services under that section are subject to the same terms and conditions as intrastate pipelines' services under Section 311 of the Natural Gas Policy Act. Those conditions are set forth at 18 C.F.R. Part 284, Subpart C, §§ 284.121-126.

the technical conference, the Commission is deferring action on Dominion Greenbrier's request for rehearing of the Commission's prior findings regarding Saltville's jurisdictional status and Saltville's request for rehearing of the Commission's rate filing requirement.

### **Background**

3. Saltville is a limited liability company. Its two members are NUI Saltville Storage, Inc., which is a wholly-owned subsidiary of NUI Corporation and Duke Energy Saltville Gas Storage, L.L.C., which is a wholly-owned subsidiary of Duke Energy Gas Transmission.

4. Saltville is constructing new underground gas storage facilities in Smyth and Washington Counties, Virginia. Saltville's facilities will utilize four depleted salt caverns, which will be developed over approximately five years. The anticipated working gas capacity for the caverns is 0.400 Bcf on May 1, 2002, gradually increasing by approximately 1.0-1.5 Bcf per year for the next five years to approximately 6.1 Bcf.<sup>4</sup> The appurtenant facilities include a 24-inch diameter pipeline seven miles in length, originating at the storage facility in Town of Saltville, Virginia, and terminating in Chilhowie, Virginia.

5. On August 6, 2002, Saltville obtained construction authorization for its facilities from the Commonwealth of Virginia State Corporation Commission (VSCC).<sup>5</sup>

6. In response to a complaint filed by Cargill, Inc., the Commission issued an order on April 11, 2002, addressing Saltville's jurisdictional status.<sup>6</sup> In that order, the Commission determined, based on Saltville's representations in that proceeding, that Saltville's facilities and operations would qualify for the Hinshaw exemption in Section 1(c) of the NGA.<sup>7</sup>

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<sup>4</sup> Saltville's data response filed on April 9, 2003.

<sup>5</sup>VSCC Order Granting Certificate, Case No. PUE-2001-00585 (August 6, 2002).

<sup>6</sup>Cargill v. Saltville Gas Storage Company, L.L.C. (Cargill v. Saltville), 99 FERC ¶ 61, 043 (2002).

<sup>7</sup> Section 1(c) of the NGA provides, in pertinent part, as follows:

The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities

(continued...)

Subsequently, Saltville filed its application for a limited jurisdiction certificate pursuant to Section 284.224 of the Commission's regulations to authorize firm and interruptible storage services for customers whose gas supplies will not be consumed in Virginia.<sup>8</sup>

7. On February 4, 2003, the Commission issued its order granting Saltville's request for a limited jurisdiction certificate pursuant to Section 284.224 of the regulations. However, the Commission's February 4 order also directed Saltville to make an additional rate filing proposing rates complying with Section 284.123(b)(2) of the Commission's regulations.<sup>9</sup>

8. On March 3, 2003, Dominion Greenbrier, Inc. filed its request for rehearing of the February 4 Order. In its rehearing request, Dominion Greenbrier emphasizes that Saltville still has no executed agreements for service using its storage facilities. Dominion Greenbrier acknowledges that Saltville is negotiating with two potential customers that eventually may store significant volumes of gas for consumption in Virginia: Duke Energy Wythe, LLC (Duke Wythe ), which plans to construct a gas-fired power plant in Wythe County, Virginia, and Henry County Power, LLC (Henry County), which plans to construct a gas-fired power plant in Henry County, Virginia.

9. However, Dominion Greenbrier notes that on January 27, 2003, a hearing examiner of the VSCC issued an order recommending denial of Duke Wythe's application for a certificate to construct its power plant. Even if Duke Wythe ultimately prevails and obtains a certificate, Dominion Greenbrier asserts that the VSCC's proceeding nevertheless has been delayed so that it will be late 2004 at the earliest before Duke Wythe will be in a

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<sup>7</sup>(...continued)

used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.

<sup>8</sup>18 C.F.R. § 284.224 (2002).

<sup>9</sup>Hinshaw pipelines are subject to the rate conditions of Section 284.123 by operation of Section 284.224(e). Section 284.123(d) sets forth a presumption that a Hinshaw pipeline's state-approved rates are fair and equitable (the standard set forth in Section 311 of the NGPA for services under that section) and not in excess of rates that the Commission would authorize an interstate pipeline to charge for similar services. In the February 4 order issuing Saltville's limited jurisdiction certificate, the Commission determined that the rates filed by Saltville with the VSCC would not satisfy the Commission's cost-based ratemaking policies, thereby rebutting the presumption in Section 284.123(d). 102 FERC at 61,331.

position to start receiving storage service from Saltville. In view of the timing of the Patriot Project being constructed by East Tennessee Natural Gas Company (East Tennessee) and the timing of the construction of Duke Wythe's and Henry County's power plants, Dominion Greenbrier further asserts Duke Wythe and Henry County will not be able to receive Saltville's storage service until 2004 and 2005, respectively.

10. On March 6, 2003, Saltville filed its request for rehearing of the February 4 order. Saltville argues that its state-approved rates are sufficiently cost-based to satisfy the Commission's policies and regulations and therefore should be approved for Saltville's interstate services under its Section 284.224 limited jurisdiction blanket certificate.

11. On April 4, 2003, Commission Staff submitted a data request to Saltville requesting information and data supporting Saltville's assertions that it will qualify for the Hinshaw exemption when it commences service.

12. On April 9, 2003, Saltville responded to the Commission's data request.<sup>10</sup>

### **Discussion**

13. As noted above, in order to qualify for Hinshaw status, several conditions must be met. One of those conditions is that all of the gas received by the company be consumed in its state. However, the Commission provides, in Section 284.224 of its regulations, for a Hinshaw pipeline to obtain a blanket certificate to provide NGA-jurisdictional services without jeopardizing its Hinshaw status. Thus, a Hinshaw pipeline holding a Section 284.224 blanket certificate can transport gas that will not be consumed in its state and still maintain its Hinshaw status.

14. Both in the Commission's April 11, 2002 order in the Cargill v. Saltville complaint proceeding<sup>11</sup> and in the February 4 order in this proceeding, the Commission's finding that Saltville qualifies as a Hinshaw was based on representations of fact made by Saltville. In Cargill v. Saltville, Saltville represented that at least 52 percent of its initial storage volumes would be gas that would be used in Virginia.<sup>12</sup> In Saltville's application for a

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<sup>10</sup>Saltville requested privileged treatment pursuant to 18 C.F.R. § 388.112 for portions of its data response. This order does not disclose any information regarding the identities of Saltville's potential customers and volumes.

<sup>11</sup>99 FERC ¶ 61, 043 (2002).

<sup>12</sup> Id. at 61,171.

limited jurisdiction certificate in this proceeding, Saltville represented that there had been no changes with regard to its anticipated customer base.<sup>13</sup>

15. Dominion Greenbrier has emphasized throughout this proceeding that Saltville has no executed agreements for the storage of gas that will be consumed in Virginia. At earlier stages of this proceeding, those arguments were speculative since there still remained time for Saltville to successfully negotiate and execute service agreements representing significant volumes of Virginia gas supplies. However, Saltville is planning to commence service on May 1, and Dominion Greenbrier alleges in its March 3 rehearing request that Saltville still has no executed service agreements. Dominion Greenbrier also makes a convincing argument, based on the construction schedules for East Tennessee's Patriot Project and Duke Wythe's and Henry County's power plants, that Saltville's initial storage volumes will include minimal, if any, gas that will be used in Virginia.

16. Saltville's April 9 data response acknowledges that it still had no executed service agreements as of that date and plans to place its initial 0.4 Bcf of storage capacity in service on May 1. Further, while Saltville has provided records indicating that a number of shippers are interested in receiving storage service this year, Dominion Greenbrier is correct that the transportation of several customers' gas to and from Saltville's facilities would be dependent on the mainline extension which is part of East Tennessee's Patriot Project.<sup>14</sup> Until the Patriot mainline extension is completed, Saltville's data response indicates that, at most, less than 7 percent of its potential storage volumes will be gas for consumption in Virginia. Again, this assumes that service agreements will be executed by all of the potential customers not dependent on the Patriot Extension.<sup>15</sup>

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<sup>13</sup> 102 FERC ¶ 61,123 at 61,330 (2003).

<sup>14</sup>The Commission certificated the Patriot Project on November 20, 2002. East Tennessee Natural Gas Company (East Tennessee), 101 FERC ¶ 61,188 (2002). In addition to looping and compression on East Tennessee's existing mainline facilities, the Patriot Project includes a 93.6-mile mainline extension (Line 3600) from a point on East Tennessee's system near Wytheville, Virginia, to its interconnection with Transcontinental Gas Pipe Line Corporation at Eden, North Carolina. The project also includes a 7-mile lateral off the new mainline extension to a planned new power plant in Henry County, Virginia.

<sup>15</sup>Based on the information in Saltville's data response, if all of the identified storage customers execute service agreements by the time the Patriot Extension is in service, then as much as 21.6 percent of Saltville's storage volumes may be gas for consumption in Virginia.

17. In view of the above considerations, the Commission is directing Saltville to file within 15 days any additional information to support its assertion of Hinshaw status. The Commission also is directing its staff to convene a technical conference, within 15 days following the filing of Saltville's response, to address issues relating to Saltville's assertion of Hinshaw status and to issue further data requests as necessary.

The Commission orders:

(A) Saltville shall respond in Docket No. CP02-430-002 within fifteen (15) days of the date of issuance of this order in accordance with the Commission's directions herein.

(B) The Commission's staff is directed to convene a technical conference within fifteen (15) days of Saltville's filing its response in accordance with ordering paragraph (A). Staff is directed to issue further data requests as necessary.

(C) Pending the Commission's review of Saltville's response to this order, the Commission defers consideration of Saltville's and Dominion Greenbrier's requests for rehearing in Docket No. CP02-430-001.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.